

CITY OF SAN JOSE, CALIFORNIA Redevelopment Agency of the City of San Jose 50 W. San Fernando Street, Suite 1100 San Jose, California 95110		Hearing Date/Agenda Number P.C.: 6-26-02      Item: 3c.
<h2 style="text-align: center;">STAFF REPORT</h2>		File Number: RCP02-06-008
		Application Type: Conditional Use Permit
		Council District: 3
		Planning Area: Central
		Assessors Parcel Number(s): 467-46-105
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PROJECT DESCRIPTION		Completed by: Judie Gilli
Location: 201 S. Second Street		
Gross Acreage: 0.77      Net Acreage: N/A      Net Density: N/A		
Existing Zoning: CG      Existing Use: Vacant Two Story Building, formerly UA Cinema		
Proposed Zoning: No Change      Proposed Use: Cinema		
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GENERAL PLAN		Completed by: JG
Land Use/Transportation Diagram Designation: Core Area		Project Conformance: [X] Yes    [ ] No [X] See Analysis and Recommendations
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SURROUNDING LAND USES AND ZONING		Completed by: JG
North: Bookstore, Coffee Shop, Fitness Center		Commercial General (CG)
East: Repertory Theater		Commercial General (CG)
South: Offices		Commercial General (CG)
West: Commercial, Residential, Hotel		Commercial General (CG)
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ENVIRONMENTAL STATUS		Completed by: JG
[X] Reuse of Downtown Supplemental EIR, Certified 04/27/98		[ ] Exempt
[ ] Environmental Impact Report complete on:		[ ] Environmental Review Incomplete
[ ] Negative Declaration circulated on :		[ ] Negative Declaration adopted on:
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FILE HISTORY		Completed by: JG
Annexation Title: Included in original City incorporation		Date:
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HISTORIC STATUS: City Landmark		Completed by: JG
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REDEVELOPMENT AGENCY and PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
[ ] Approval [X] Conditional Approval [ ] Denial [ ] Uphold Director's Decision	[X] Action [ ] Recommendation	Approved by: _____ Date: _____  Approved by: _____ Date: _____
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PROPERTY OWNER Redevelopment Agency 50 W. San Fernando St. Ste. 1100 San Jose, CA 95113	DEVELOPER Cinelux 2501 Winchester Blvd. Campbell, CA 95008	ARCHITECT

## **BACKGROUND**

The Redevelopment Agency of the City of San Jose is requesting this Conditional Use Permit (CUP) to allow the operation of a cinema from 8:00 am to 2:00 am, daily. The 0.77-acre site (201 South Second Street) is located on the south-west corner of South Second Street and Paseo de San Antonio, and is developed with a two-story building designed for cinema use; the eight existing movie screens are proposed for re-use. The site is located in the Commercial General (CG) Zoning District within the City's downtown. The building is presently vacant but was most recently used by United Artists Cinema as a movie theater from July 1994 to July 1999. The building has been vacant since United Artists ceased operation in July 1999. The facility was originally approved by the Planning Commission for cinema operation through a CUP (RCPSH 93-11-014, see Attachment) that expired one year after the cinema ceased operation, in accordance with Municipal Code, Section 20.100.730(B). The Redevelopment Agency, in coordination with Cinelux Theatres, is proposing to re-open the existing facility for cinema use. This CUP proposes to re-establish the terms and conditions of the original permit

Municipal Code, Chapter 20.40 requires a CUP for theatre use in the Commercial General (CG) Zoning District. In addition, Municipal Code, Section 20.40.500 requires that any commercial use, other than office use, operating between the hours of 12:00 am and 6:00 am obtain a CUP. This requirement is also recognized in *City Council Policy 6-27: Evaluation of 24-Hour Uses*. Therefore, the subject CUP will fulfill both theater operation and after-midnight use requirements. The subject CUP does not include any exterior modifications to the existing building.

The project site is surrounded by a variety of land uses: a coffee shop (Starbucks), bookstore and fitness center are located to the north, across the Paseo; office uses, are located to the south; the Repertory Theatre is located to the east, across Second Street; the mixed-use Twohy building is located directly to the west. The five-story Twohy building is presently vacant and is undergoing extensive construction. Upon completion of the construction activities, it is anticipated that the Twohy will be occupied by retail uses on the ground-floor and residential lofts on floors two through five. The Fairmont Hotel and Annex and the Montgomery Hotel are also located to the west, across South First Street.

## **ENVIRONMENTAL REVIEW**

Environmental clearance has been granted for this project through the Final Supplemental Environmental Impact Report (EIR) entitled, *Downtown Strategy Plan*, certified by City Council Resolution No. 68839 on April 27, 1999 in that the City has determined that the project does not involve any new significant environmental impacts beyond those previously analyzed in the EIR.

## **GENERAL PLAN CONFORMANCE**

The project site is designated "Core Area" on the *San Jose 2020 General Plan Land Use/Transportation Diagram*. This designation allows a range of "office, retail, service, residential, and entertainment uses in the Downtown Core Area." More specifically, late night and entertainment-oriented uses are encouraged to locate in the Core Area rather than in other less appropriate areas of the City so long as they do not impact neighboring uses. Given the project's downtown location, the

proposed use is consistent with the General Plan policies regarding the downtown and the Core Area designation.

## ANALYSIS

The principal issues associated this CUP request are as follows:

### Consistency with Municipal Code, Section 20.40.500 and City Policy, 6-27: Evaluation of 24-Hour Uses

The applicant proposes to operate a cinema from 8:00 am to 2:00 am, daily. The use is, therefore, subject to Municipal Code, Section 20.40.500 and *City Council Policy, 6-27: Evaluation of 24-Hour Uses*, both of which require commercial uses to obtain a CUP in order to operate after-midnight. The intent of these provisions is to ensure compatibility of late-night uses with their surrounding environment.

As noted, the project site is surrounded by a wide range land uses, almost exclusively commercial in nature. The exception is the Twohy Building, which abuts the project site to the west. At present, the Twohy Building, which was originally designed for office use with ground-floor retail occupancy, is vacant and undergoing extensive construction to convert its upper floors to allow for residential occupancy. Re-establishment of the cinema use at the project site was anticipated at the time the Twohy was approved for residential use in December 2001, through Conditional Use Permit, RCP 01-11-011, and was considered consistent with the objectives of both the *General Plan* and the *Downtown Strategy Plan*, which promote a mix of residential and commercial uses in close proximity to each other within the downtown core. Additionally, the Twohy Building itself will contain a mix of uses. While ground-floor tenants for the Twohy are as yet unidentified, they will likely be of a commercial nature, such as restaurants, retailers and eating and drinking establishments. Given the downtown location, the proposed cinema should integrate nicely into its site, which was designed and constructed for such use, and should complement the wide range of uses in the immediately surrounding area.

### Parking

The project site is located within the Downtown Parking Management Zone and is subject to the provisions of Municipal Code, Section 20.90.510 regarding off-street (i.e., on-site) parking. Under these provisions, theater uses, whether for live or cinematic performances, are not required to provide parking spaces. Although no on-site parking is provided specifically for the proposed cinema use, several surface parking lots are located within three blocks of the project site to serve patrons of the establishment.

Based on this analysis, staff concludes that the proposed project conforms to the requirements of the Municipal Code and conforms to *Council Policy 6-27*. Moreover, the project complies with both the City's *General Plan* and *Downtown Strategy Plan* objectives regarding downtown revitalization and the creation of different, complementary land uses in close proximity to one another.

## RECOMMENDATION

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts, findings and conditions in its Resolution:

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit to allow the operation of a cinema from 8:00 am until 2:00 am, daily.
2. The project site is located in the Commercial General (CG) Zoning District. Theatre uses are required to obtain a Conditional Use Permit in the Commercial General Zoning District.
3. The project site is designated “Core Area” on the San Jose 2020 General Plan Land Use/Transportation Diagram.
4. The project site is approximately 0.77 acres and is developed with a two-story, building designed for use as movie theater.
5. Environmental clearance for this project was granted through the Final Supplemental EIR entitled, *Downtown Strategy Plan*, adopted by City Council Resolution No. 68839 on April 27, 1999.
6. Commercial, theatre, residential and office uses are adjacent to the project site.
7. The project site is located in the Downtown Parking Management Zone and is not required to provide on-site parking for the proposed cinema use based on the parking requirements of Municipal Code, Section 20.90.510.
8. The project site is served by First Street, Second Street and light rail and VTA bus service. A light rail stop is located within 50 feet of the project site.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit (CUP), the proposed use will comply with the requirements of the Commercial General (CG) Zoning District in that approval of a CUP is required for cinema use and for commercial uses that operate after midnight.
2. The project conforms to the Core Area land use designation in the 2020 General Plan in that commercial and entertainment-oriented uses are encouraged by this land use designation.
3. This 0.20-acre property and existing building are well suited for the proposed cinema use due to the site’s downtown location, the building’s design for movie theater use, proximity to commercial and transit services.
4. The project is in conformance with the California Environmental Quality Act in that it does not include additional impacts to those addressed in the Final Supplemental EIR entitled, *Downtown Strategy Plan*,” adopted by City Council Resolution No. 68839 on April 27, 1999.

5. The proposed use is compatible with its downtown environment, which consists of a wide range of uses. The proposed cinema project will directly serve downtown residents, as well as visitors to the area and the downtown workforce.
6. The proposed use does not need to provide parking facilities as stated in Municipal Code, Section 20.90.510.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

Subject to testimony provided at the public hearing, it is recommended that the Planning Commission consider the following actions.

1. **The proposed use at the location will not:**
  - a. **Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area** because the proposed theatre use is consistent with the commercial uses of the surrounding area; or
  - b. **Impair the utility or value of property of other persons located in the vicinity of the site** because the proposed theatre use will contribute to the vitality and desirability of Downtown and will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
  - c. **Be detrimental to public health, safety or general welfare** because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, *Downtown Strategy Plan EIR* (Resolution No. 68839); and
2. **The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area** because the project site already includes the improvements needed for the proposed cinema use which is compatible with the uses in the surrounding area; and
3. **The proposed site is adequately served:**
  - a) **By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate** in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
  - b. **By other public or private service facilities as are required** in that the scale of the project will not necessitate expansion of service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions. Each and all of which conditions

shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. The “Acceptance of Permit and Conditions” form shall be *signed, notarized and returned to the Redevelopment Agency within 60 days from the date of the issuance of the Resolution granting this Permit.* Failure to do so will result in the Permit automatically expiring regardless of any other expiration date contained in this Permit. Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Exterior Improvements. No exterior modifications are approved with this Permit. Any exterior improvements are subject to approval by the Executive Director of the Redevelopment Agency and the issuance of appropriate City permits, as required.
4. Hours of Operation. The hours of operation for the theatre use will be limited to 8:00 AM to 2:00 AM, daily.
5. Noise and Acoustics.
  - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.

- b. Noise emission shall comply with the policies identified in the Noise Element of the San Jose 2020 General Plan.
6. Trash, Refuse, Garbage and Litter.
- a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
  - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 pm and 6:00 am, daily.
  - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
  - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way.
7. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.

## **CONDITIONS SUBSEQUENT**

- 1. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
- 2. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Executive Director of the Redevelopment Agency, or the Planning Commission on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350 of the San Jose Municipal Code it finds:
  - a. A violation of any condition of the Conditional Use Permit was not abated, corrected or rectified within the time specified on a notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on a Notice of Noncompliance; or
  - c. A use as presently conducted creates a nuisance.